

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

DANIEL J. LANG,  
Petitioner,  
v.  
RICHARD J. HERNANDEZ,  
Warden,  
Respondent. } Case No. CV 06-4927 RGK(JC)  
} (PROPOSED)  
} ORDER ADOPTING FINDINGS,  
CONCLUSIONS, AND  
RECOMMENDATIONS OF UNITED  
STATES MAGISTRATE JUDGE

Pursuant to 28 U.S.C. § 636, the Court has reviewed the Petition for Writ of Habeas Corpus by a Person in State Custody (the “Petition”) and all of the records herein, including the attached Report and Recommendation of United States Magistrate Judge (“Report and Recommendation”), and petitioner’s objections to the Report and Recommendation (“Objections”). The Court has further made a *de novo* determination of those portions of the Report and Recommendation to which objection is made.<sup>1</sup> The Court concurs with and adopts the findings, conclusions,

<sup>1</sup>This Court, in an exercise of its discretion, declines to consider new evidence and arguments presented for the first time in the Objections. See United States v. Howell, 231 F.3d 615, 621 (9th Cir. 2000), cert. denied, 534 U.S. 831 (2001). Moreover, to the extent petitioner asserts that the Court should address the merits of the Petition because he is “actually innocent,” he is incorrect as the Ninth Circuit has recently determined that there is no “actual

(continued...)

1 and recommendations of the United States Magistrate Judge except footnote 24,<sup>2</sup>  
2 and overrules the Objections.

3 IT IS HEREBY ORDERED: (1) respondent's Motion to Dismiss is granted  
4 to extent it seeks dismissal of petitioner's claim that the Board of Prison Terms  
5 refused to honor petitioner's plea agreement, and is otherwise denied as moot;  
6 (2) the remaining claims in the Petition are dismissed as they are successive, and  
7 this Court is without jurisdiction to consider them; and (3) that Judgment be  
8 entered denying the Petition and dismissing this action.

9 IT IS FURTHER ORDERED that the Clerk serve copies of this Order, the  
10 United States Magistrate Judge's Report and Recommendation, and the Judgment  
11 herein on Petitioner and on counsel for Respondent.

12 LET JUDGMENT BE ENTERED ACCORDINGLY.  
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14 DATED: September 29, 2010

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17 HONORABLE R. GARY KLAUSNER  
18 UNITED STATES DISTRICT JUDGE  
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23 <sup>1</sup>(...continued)

24 "innocence" exception that serves as a gateway through the statute of limitations to the merits of a  
petitioner's claims. Lee v. Lampert, 610 F.3d 1125, 1133 (9th Cir. 2010).

25 <sup>2</sup>Although it has no impact on the analysis and outcome, the Court notes that subsequent  
26 to the issuance of the Report and Recommendation, the United States Supreme Court held that  
27 28 U.S.C. § 2244(d) is subject to equitable tolling in appropriate cases. Holland v. Florida, 130  
S. Ct. 2549, 2560 (2010). Accordingly, footnote 24 of the Report and Recommendation is no  
28 longer accurate.